California Energy Commission
Public Benefits Program

Staff Discussion Paper Regarding Administrative Structure Issues
Prepared for the A.B. 1105 Staff Workshop
Scheduled on October 1, 1999

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In support of the mandate contained in Assembly Bill 1105, the following staff paper was written to give an indication of the framework and principles used to consider available administrative structure alternatives for the Public Benefits Program. On October 1, 1999, you are invited to a staff workshop to discuss the proposed options detailed in the paper.

This paper is organized into the following sections:

STAFF DISCUSSION PAPER REGARDING
ADMINISTRATIVE STRUCTURE ISSUES
September 22, 1999

Prepared for the October 1, 1999 Staff Workshop on Assembly Bill 1105

I. INTRODUCTION

AB 1105 requires the California Energy Commission to conduct a public process to prepare (1) a *transition plan report* regarding the "transfer of energy efficiency programs from the Public Utilities Commission to the State Energy Resource Conservation and Development Commission . . . ." and (2) an *operational plan report* that "recommend(s) a post-transition administrative structure that is designed to achieve efficient and effective program administration."

Initially, a determination regarding the nature of the post-transition administrative structure for the Public Benefits Energy Efficiency Program (hereinafter the Energy Efficiency Program) must be made before any meaningful transition process can be proposed. To determine this post transition administrative structure objectively, policymakers must take into account and resolve three interrelated topics, namely: (1) what are the primary **functions** and related program design framework(s) which the post transition administrative structure must implement? (2) What are the important public policy criteria and/or other evaluation **principles** which decisionmakers should use when considering different administrative structure options? and (3) What are the major administrative structure **options**, and how well would these options perform the program functions and satisfy the evaluation principles which must be met if the Energy Efficiency Program is to "achieve efficient and effective program administration"?

Staff has reviewed the various public comments and other inputs received from the first two Committee workshops, and has augmented this material with additional thoughts concerning the important functions, evaluation principles and options available for the administrative structure of the post transition Energy Efficiency Program. The following material is preliminary in nature, and may be revised or otherwise modified as the result of future public input and/or Committee directions.

II. THREE KEY TOPICS IN SELECTING AN ADMINISTRATIVE STRUCTURE

A. What Are The Functions Which The Administrative Structure Must Carry Out?

In the first two Committee workshops, a great deal of input was received concerning the important policy goals, public benefits and program design framework which must be implemented by the post transition administrative structure. Staff has reviewed this material and suggests that the administrative structure should consist of five key **functional categories** to ensure that these matters are addressed, namely (1) Program Governance and Oversight

Functions; (2) Program Design and Management Functions; (3) Project Delivery and Implementation Functions; (4) Program Evaluation Functions; and (5) Independent Program Review Functions. While Staff recognizes that it may be difficult to draw "bright lines" between these five functional categories, the categories provide a useful taxonomy to ensure identification of all key functions which the Energy Efficiency Program administrative structure must perform. In addition, these functional categories are helpful when evaluating the different administrative structure options, and will minimize any semantic confusion which might otherwise occur as the discussion and debate about administrative structure proceeds. The following material is intended to further "flesh out" the types of functions which are embodied in each of these five categories.

1. Program Governance and Oversight Functions

Activities that properly fit within the "governance and oversight" category include the following: establishing program policies and goals; developing a strategic plan for program implementation; making key resource allocation decisions; obtaining feedback and evaluation on program performance; determining future program directions and duration; and dispute resolution. Among the most important of these governance and oversight activities are the following:

(a) Broad Policy Setting, Budgeting and Oversight: Pursuant to Legislative authorization, the governing entity must establish broad policy goals for the Energy Efficiency Program, set broad budgets, and maintain a process for periodically reviewing actual progress toward meeting goals. Among other things, the governance function may include development of policy rules concerning program implementation and oversight.

(b) Selection and Oversight of Program Administrators and Market-Focused Portfolio Managers: The governing entity must contract with program administrators and portfolio managers (see Item 2.(d), below) through appropriate selection processes, and then must oversee the work of these administrators and managers to assure conformance with broad-based policy goals.

2. Program Design and Management Functions

There are a number of activities which fit within the "program design and management" category, including the following:

(a) Assessing Markets: An entity or entities must identify opportunities to make sustainable improvements in specific markets based on data collected on the structure of markets, trends in prices and market share, and data on customer preferences and purchasing patterns.

(b) Designing Programs: Appropriate intervention strategies and related programs designs must be developed to: (1) achieve broad policy goals; (2) solicit innovative ideas for program and market strategies from third parties; (3) work with stakeholders to ensure high participation, ensure public comment is representative, and develop alliances and partnerships with private firms; (4) track program implementation and evaluate progress in meeting goals; (5) change

program designs in response to either policy changes from the oversight body, and/or other relevant feedback from stakeholders and market actors.

(c) Targeting Market Areas: Market areas must be selected for intervention, and appropriate program portfolios must be developed to meet policy goals for that target market.

(d) Developing and Managing Market-Focused Portfolios: Objectives must be developed for managing specific market-focused portfolios of programs and pilot projects in a way that will comprehensively and synergistically minimize risk while maximizing realization of policy goals. The portfolio manager(s) will be responsible for allocating portfolio budgets between the various programs and pilot projects, and will be accountable for the overall performance of the portfolio.[1]

(e) Selecting Entities To Actually Implement The Program(s): When program design efforts have been completed, the program and portfolio managers will need to contract with entities to actually implement the programs in question.

3. Project Implementation and Delivery Functions

(a) Project Implementation: A number of entities will be needed to implement the program(s) designed above. Among other things, these entities will deliver goods and services through subcontractors when necessary, implement market tracking system, participate in regional alliances and trade groups, and provide "feedback" recommendations to program designers and policymakers as projects proceed.

(b) Individual Project Management: Project implementers will be responsible for managing their individual projects to ensure delivery of the objectives and incentives specified by the portfolio manager. (Note: This individual project-level management function is distinct from the much broader market-focused portfolio management function discussed in item 2(d), above).

4. Program Evaluation Functions

(a) Evaluate Individual Programs and Project Performance: An entity or entities will need to conduct periodic real time evaluations of individual programs and pilot projects to determine their potential or actual contribution to the overall goals of the Energy Efficiency Program. Results should be provided to both the Energy Efficiency Program governing entity and to the program/portfolio managers for use in determining the need for changes in program policies, program budgeting, program design or program testing.

(b) Evaluate Market Performance At The Portfolio Level: Assessments should be conducted regarding the overall market and the performance of the program portfolio, including the comprehensiveness, ability to manage risk and synergy of the portfolio, the degree of innovation present in the portfolio, and the contribution of the whole portfolio to achieving policy goals.

Results should be provided to the Energy Efficiency Program governing entity and the program/portfolio managers for use in determining the need for changes in program policies, program budgeting, program design or program testing.

(c) Ensure That Evaluations Are Integrated With Other Functions: Effective "feedback loops" must be established and maintained to ensure that the results of key evaluations are actually considered and incorporated into various decision functions including program design, portfolio strategy and management, program implementation, solicitation of program ideas, and (where appropriate) into the market itself.

5. Independent Program Review Functions

(a) Evaluate Overall Program Policy and Administrative Structure: An entity will be needed to periodically conduct an independent review of the entire Energy Efficiency Program from both a policy and an administrative effectiveness perspective. This independent review will provide objective feedback to the Legislature and others regarding the ongoing need for the overall program and suggested ways for improving the efficiency and effectiveness of the administrative structure.

(b) Fiscal Auditing: The Energy Efficiency Program entails a significant amount of funds, so a periodic independent audit regarding the fiscal integrity of the entire program will be needed.

B. What Principles Should Be Used To Evaluate Administrative Structure Options?

As stated in the introductory portion of this discussion paper, objectivity can be achieved when determining the best option(s) for the post transition administrative structure by first taking into account key public policy criteria and/or other **evaluation principles** which the selected administrative structure should be able satisfy.

Based on input from the first two Committee workshops, below are a number of evaluation principles which Staff believes policymakers should take into account prior to deciding upon the proper post-transition administrative structure for the Energy Efficiency Program. Many of these evaluation principles would be applicable to any publicly-funded program. Others are unique to the Energy Efficiency Program, either because of the particular goals and objectives which this program seeks to achieve, or because of the specific nature of the deregulated electricity industry. In addition, some of these evaluation principles may be "at odds" with each other (e.g., maximizing public input and accountability while at the same time minimizing bureaucratic "red tape.") Policymakers will have to establish the relative priorities in such circumstances. Nevertheless, all of these principles need to be considered if a sound administrative structure is to be established for the Energy Efficiency Program.

1. The Administrative Structure Should Be Able To Provide Smooth Program Continuity

It is important for the new administrative structure to provide smooth program continuity, and "do no harm to" nor create any unintended hiatus with ongoing Energy Efficiency Program efforts. Therefore, it is essential that the new administrative structure be (a) legal; (b) capable of adequate staffing; and (c) capable of starting up operations quickly.

2. The Administrative Structure Should Make Efficient Use Of Program Resources

The new administrative structure should be designed to use program resources efficiently. To do so it should (a) avoid unnecessary complexity in the overall design of the administrative structure; (b) make use of existing abilities and expertise wherever possible; (c) provide clear policy guidance from the beginning, while limiting "micro management" from the top-down; (d) streamline contracting and other administrative procedures to eliminate unnecessary "red tape;" and (e) ensure that the total financial costs of administering the program (including overhead costs and unintended tax consequences) are minimized.

3. The Administrative Structure Should Operate In A Fair and Effective Manner

The new administrative structure should be designed to ensure that the Energy Efficiency Program is operated in a fair and effective manner. Accordingly, (a) the structure should be designed to make funding awards based on merit, not politics; (b) the structure should avoid conflicts of interest; (c) the structure should be able to effectively use a portfolio of programs that can be flexibly modified when circumstances warrant; and (d) the structure should be designed to provide internal "checks and balances" within the Energy Efficiency Program.[2]

4. The Administrative Structure Should Be Open and Accountable To The Public

The new administrative structure should be (a) transparent and understandable to the public; (b) accessible and receptive to public input and concerns; and (c) subject to periodic independent review to ensure objective evaluation and public accountability.

5. The Administrative Structure Should Be Able To Provide Other Program Benefits

There are a number of other characteristics which are desirable for the Energy Efficiency Program administrative structure, including (a) the ability to respond quickly and flexibly to changing market conditions; (b) the ability to "tailor" programs when needed (i.e. avoid a "one size fits all" approach); and (c) the ability to interact effectively with other programs and all other stakeholders (e.g., the PIER Program, the Low Income Energy Efficiency Program, local governments, utilities, etc.) to maximize program synergies and minimize unnecessary duplication;

C. What Are The Administrative Structure Options For The Energy Efficiency Program?

There are three distinct *types* of entities which could perform the various functions identified in Section II A., above. Specifically, there are (1) public entities (e.g., new or existing state agencies, local governments, state-funded colleges and universities, etc.); (2) private entities (e.g., for profit and non profit corporations, small business, etc.); and (3) regulated monopolies (e.g., the utility distribution companies).

After considering the various evaluation principles proposed above, the Energy Commission Staff has concluded that no single type of entity is appropriate for carrying out all five functional categories which must be provided by the administrative structure of the program.[3] Instead, Staff believes that the post transition administrative structure is likely to require some *combination* of entity types to carry out the program functions in a manner most consistent with the evaluation principles discussed earlier.

There are a large number of alternatives which could be considered for the post transition administrative structure. Table 1, below, contains three specific options which Staff views as "contenders," with some pros and cons of each option provided thereafter for discussion purposes. Public reaction to these and other options will be important in shaping the Commission's final recommendations in the AB 1105 report.

TABLE 1[a/b]

Analysis of Three Administrative Structure Alternatives

Functions	Principles	Possible Entities	Admin Structure Options		
			A	**B**	**C**
Governance	❑ legal, ❑ accountable ❑ quick start ❑ etc.	❑ Public Entity ~~❑ Utility~~ ~~❑ Private[b]~~ ~~❑ Combination~~	CEC	New Public Entity	CEC
Program Management	❑ effective ❑ efficient procurement ❑ no breaks in service ❑ uses existing expertise ❑ etc.	❑ Public Entity ❑ Utility ❑ Private[b] ❑ Combination	CEC	Private[b] *or* Utility	Combination (i.e. a mix of Public, Utility *and* Private Entities[b])
Implementation/ Delivery	❑ experienced ❑ effective ❑ efficient ❑ etc.	❑ Public Entity ❑ Utility ❑ Private[b] ❑ Combination	Private[b]	Private[b] *and* Utility	Private[b] *and* Utility
Program Evaluation	❑ accountable ❑ provides feedback ❑ checks and balances ❑ etc.	❑ Public Entity ~~❑ Utility~~ ❑ Private[b] ❑ Combination	CEC	Private[b]	CEC *and* Private[b]
Independent Review	❑ objective evaluations ❑ credible to Legislature ❑ no conflict of interest ❑ etc.	❑ Public Entity ~~❑ Utility~~ ❑ Private[b] ❑ Combination	Private Panel[b] (policy) *and* DOF (fiscal)	Private Panel[b] (for *both* policy/fiscal evaluation)	Private Panel[b] (policy) *and* DOF (fiscal)

a In this Table, entities with "strike through" lines are considered inappropriate for the function in question.

b In this Table, the term "private" or "private panel" includes *both* nonprofit *and* for profit corporations.

Pros and Cons For Option A

Some Pros For Option A:

- Utilizes an existing agency to provide governance, management and program evaluation functions, thereby taking advantage of existing expertise, minimizing start-up delays, and assuring that key program functions are well integrated.

- Utilizes private entities for implementation and delivery functions, thereby capturing the efficiencies and effectiveness of the private sector while avoiding any real or perceived "conflict of interest" which might result if utilities were involved.

- Utilizes separate entities for different aspects of the independent program review, thereby assuring that the policy and fiscal reviews are handled by entities with appropriate expertise.

Some Cons For Option A:

- Relies extensively on an existing state agency, thereby failing to take advantage of expertise and various efficiencies which may exist in the private and utility sectors.

- Fails to make any use of existing utility expertise.

- Fails to provide the type of "checks and balances" which are possible if the administrative structure is less homogeneous in nature.

- Fails to utilizes a single public entity for independent program review, thereby increasing overhead costs for this function while not ensuring that the policy and fiscal reviews are well integrated.

Pros and Cons For Option B

Some Pros For Option B:

- Limits government agency role to the essential functions of governance and oversight

- Provides an opportunity to broaden participation in the governance function, and possibly avoid other restrictions and limitations that existing public entities (such as the California Energy Commission) are currently bound by.

- Takes advantage of expertise and various efficiencies which may exist in the private and utility sectors.

- Maximizes use of existing utility expertise in program management and delivery.

- Creates structural "checks and balances" by allowing different entities to play different functional roles.

- Utilizes a single private entity for independent program review, thereby potentially minimizing overhead costs for this function, while ensuring that the policy and fiscal reviews are well integrated.

Some Cons For Option B:

- Requires creation of a new governing entity, thereby causing potential delays in "start-up" and other significant costs associated with creating a new government entity

- Fails to address important "conflict of interest" concerns which arise whenever utilities are primarily responsible for either the management or the implementation functions of the program

- Does not assure that an integrated "feed back" loop will exist between the program evaluation and program governance functions.

- Fails to utilize separate entities for different aspects of the independent program review, thereby creating the possibility that the reviewing entity will lack sufficient expertise to perform both policy and fiscal reviews competently.

Pros and Cons For Option C

Some Pros For Option C:

- Utilizes an existing public energy agency to provide governance and oversight functions, thereby taking advantage of the recognized expertise and resources of that agency, while minimizing start-up delays and assuring that overall program needs and direction are well understood.

- Limits government agency role to the essential functions of governance and oversight, and related program evaluation functions

- Recognizes that program management functions are varied and complex, and may best be implemented if the expertise of different types of entities (public, private, and utility) can be utilized in those areas where particular management strengths exist.

- Takes advantage of expertise and various efficiencies which exist in the private and utility sectors.

- Makes use of existing utility expertise in both program management and implementation functions, while affording an opportunity to minimize utility "conflict of interest" problems through the ability to select other non-utility entities if such conflicts cannot be avoided.

- Creates structural "checks and balances" by having different entities play different functional roles.

- Ensures that an integrated "feed back" loop will exist between the program evaluation and program governance functions.

- Utilizes separate entities for different aspects of the independent program review, thereby assuring that the policy and fiscal reviews are handled by entities with appropriate expertise.

Some Cons For Option C:

- Fails to broaden membership in the governance and oversight functions beyond the make-up of an existing public agency.

- Fails to fully eliminate the "conflict of interest" concerns that may arise if utilities have any role in either the management or the implementation functions of the program

- Fails to utilize a single private entity for independent program review, thereby potentially increasing overhead costs for this function, and while failing to ensure that the policy and fiscal reviews are well integrated.

End Notes:

[1] These managers will not manage the individual projects within the portfolios, but will be responsible for how these portfolios *as a whole* are performing. *See* Item 3(b), above.

[2] To achieve this outcome, certain functions *should not* be combined in the same organization. For example: (a) broad policy-setting should be separated from program/portfolio management, program design, and program implementation; (b) responsibility for program evaluation should be separated from both program design and management, although these functions should be closely linked; (c) evaluation of market performance at the portfolio level should be separated from portfolio management; and (d) the independent review of overall policy and administrative structure should be separated from all other functions.

Among other things, a well designed system of "checks and balances" should ensure that portfolio managers receive the information, incentives and authority they need to periodically adjust their market-focused portfolios, and to "weed out" poorly performing programs and pilot projects in a timely manner.

[3] Thus, for example, while private entities or regulated monopolies may possess important attributes which are essential for performing the program management or program implementation functions, these same type of entities lack essential characteristics which are needed to perform the program governance and oversight functions. Conversely, a public entity (e.g., the California Energy Commission) may be well suited to perform important program governance and oversight functions, but be poorly qualified to conduct actual program implementation and delivery functions.